

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: February 5, 2021  
TO: All Members, City Council  
FROM: Jonah Temple, Assistant City Solicitor  
RE: Housing Choice Zoning Amendments

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On January 14, 2021, Governor Charlie Baker signed into law *An Act Enabling Partnerships for Growth* (the “Act”), a comprehensive economic bill that provides Covid-19 economic relief to various sectors. The Act included the long-awaited Housing Choice legislation that was previously proposed by Governor Baker in an effort to increase housing development. This memorandum summarizes the key changes to Massachusetts zoning law, G.L. c. 40A, that are most relevant to the City Council.

1. Simple Majority Vote for Certain Zoning Amendments and Special Permits

Prior to the Act, all changes to local zoning ordinances and all special permits required a  $\frac{2}{3}$  vote to be approved. The Act changes that required vote from  $\frac{2}{3}$  to a simple majority for certain types of zoning amendments and special permits.

The following types of zoning amendments are now subject to simple majority vote:

- Amendments that allow as of right or by special permit accessory dwelling units.
- Amendments that allow as of right or by special permit multi-family or mixed-use developments at an “eligible location,” which is defined as an area that by virtue of its infrastructure, transportation access, existing underutilized facilities, or location is a highly suitable location for residential or mixed-use smart growth zoning districts or starter home districts, including areas near transit stations such as rapid transit, commuter rail, bus or ferry terminals, or areas of concentrated development such as town and city centers and other existing commercial districts in cities and towns and existing rural village districts.
- Amendments that allow as of right open space residential developments.
- Amendments that allow by special permit an increase in the permissible density or intensity of use in a multi-family or mixed-use development.
- Amendments that allow by special permit a reduction in the amount of parking required for residential or mixed-use developments.

- Amendments that provide for TDR (Transfer of Development Rights) zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development where a municipality deems it most appropriate, but will not result in a reduction in the maximum number of housing units that could be developed within the municipality.
- Amendments that modify local regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking, and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted the existing zoning ordinance.
- Adoption of a smart growth zoning district or starter home zoning district in accordance with state law Chapter 40R.

The Act also provides a mechanism, known as a protest petition, to return the voting threshold for the above types of amendments back to  $\frac{2}{3}$  in very limited circumstances where the owners of fifty percent or more of the area of the land proposed to be included in the zone change or of the area of the land immediately adjacent extending 300 feet therefrom file a protest to the zoning change.

The following types of special permits are now subject to a simple majority vote:

- Multi-family housing located within  $\frac{1}{2}$  mile of a commuter rail station, subway station, ferry terminal, or bus station with not less than 10% of the housing affordable to households with annual income less than 80% of Area Median Income and whose affordability is assured by a minimum 30-year affordable housing restriction.
- Mixed-use development in centers of commercial activity within a municipality, subject to the same affordability requirements referenced above for multi-family housing.
- A reduced parking space to residential unit ratio requirement if the reduction results in the production of additional housing units.

These new voting requirements are *currently in effect* and will apply to all future City Council action on special permits and zoning amendments.

## 2. Multi-Family Zoning by Right in MBTA Communities

The Act imposes new by right multi-family zoning requirements for all “MBTA Communities,” which includes nearly all communities within the Greater Boston area and eastern Massachusetts, including Newton. All “MBTA Communities” must now have at least one zoning district of reasonable size in which multi-family housing is allowed by right, with no age restrictions and that is suitable for families with children. The Act also requires each such zoning district to have a minimum gross density of 15 units per acre and be no more than  $\frac{1}{2}$  mile from a transit station.

If an MBTA Community fails to comply with this new zoning requirement, the Act imposes significant state funding penalties. Communities not in compliance will forfeit their eligibility to receive funding from sources such as the Governor's Housing Choice Initiative, the Local Capital Projects Fund, and the MassWorks infrastructure program.

Newton does not currently have a zoning district that satisfies the above requirements. Therefore the City will need to adopt such a district through formal amendment of the zoning ordinance. Given that the minimum criteria for this required district appear to also satisfy the requirements for being an "eligible location" for multi-family housing or mixed-use development, it is likely that adoption of such a zoning district will only require a majority vote.

The state Department of Housing and Community Development (DHCD) recently issued preliminary guidance regarding compliance with this by right multi-family zoning requirement. The guidance states that MBTA Communities will be deemed in compliance with the requirement until more specific guidance is developed and made available to affected communities. This means the City will have some period of time to implement the planning process necessary to adopt the mandatory zoning before it becomes ineligible for state grant programs.

### 3. Special Permit Standard for Reduced Parking for Residential Developments

The Act also allows municipalities to adopt a different special permit standard for reduction in parking if they choose. A zoning ordinance may provide that special permits can be granted for reduced parking spaces for a residential development after a finding by the special permit granting authority that the public good would be served and that the area in which the development is located would not suffer a substantial adverse effect from such diminution in parking.

### 4. Looking Ahead

The changes to a simple majority vote for certain zoning amendments and special permits are effective immediately and now apply to all future City Council action that triggers a majority vote. Moving forward, the Law Department will notify the City Council, through its Land Use and Zoning and Planning Committees, whenever a docket item triggers a simple majority voting requirement. In contrast, the new requirement that Newton adopt a by right multi-family zoning district is not immediate. The City will have time to create the required compliant zoning district and will not forgo any grant opportunities until additional guidance is provided and likely for some period of time thereafter.

DHCD intends to issue more detailed guidelines to MBTA Communities on compliance criteria and timelines for the Act's provisions requiring a by right multi-family zoning district. It is also expected that the Executive Office of Housing and Economic Development will issue guidance to assist municipalities in determining voting thresholds for various zoning amendments.

The Law Department is closely monitoring these significant changes and will keep you up to date when further guidance is released. Additional information and advice will also likely be forthcoming from the City's Planning and Development Department on the planning process for adoption of a by right multi-family zoning district.